

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Miyano Machinery USA Inc.,)	
)	
Plaintiff)	
)	Civil Action No. 08 C 526
v.)	
)	Hon. Virginia Kendall
MiyanoHitec Machinery, Inc.,)	
Thomas ("Tom") Miyano, a/k/a)	Magistrate Judge Nolan
Toshiharu Miyano and)	
Steven Miyano, a/k/a Shigemori)	
Miyano,)	
)	<u>JURY TRIAL DEMANDED</u>
Defendants)	

DECLARATION OF (ATTORNEY) JASON SMALLEY

Jason Smalley deposes and states:

1. I am a member of the bar of the State of Illinois and of this Honorable Court. I am currently employed as an attorney at Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. ("Cook Alex") in Chicago, Illinois. I am a named attorney of record in the case of Miyano Machinery USA Inc. v. MiyanoHitec Machinery, Inc., et al. The purpose of this declaration is to authenticate various public records and other documents.

2. The following Exhibits, which accompany Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, are true and authentic copies of documents acquired from the United States Patent and Trademark Office:

Exhibit 1	Registration Certificate for Trademark Registration No. 3,328,718;
Exhibit 2	Registration Certificate for Trademark Registration No. 1,527,809;
Exhibit 3	Registration Certificate for Trademark Registration No. 1,217,317;
Exhibit 4	Application for Registration, Application Serial No. 77/176,918;

- Exhibit 5 Registration Certificate for Trademark Registration No. 1,473,925;
- Exhibit 31 Document entitled "Petition for Cancellation;"
- Exhibit 33 Document entitled "Motion of Petitioners for Leave to File, *Instanter*, Amended Petition for Cancellation;"
- Exhibit 34 Document entitled "Petition for Cancellation;"
- Exhibit 35 Registration Certificate for Trademark Registration No. 1,529,343;
- Exhibit 36 Document entitled "Application for Registration on Principal Register Established by the Act of July 5, 1946," a letter dated August 8, 1988, document entitled "Combined Declaration under Sections 8 and 15" and attachments thereof;
- Exhibit 37 Document entitled "Application for Registration on Principal Register Established by the Act of July 5, 1946," and document entitled "Combined Declaration under Sections 8 and 15;"
- Exhibit 38 Document entitled "Application for Registration on Principal Register Established by the Act of July 5, 1946," a letter dated August 8, 1988, and attachments thereof;
- Exhibit 39 Document entitled "Notice of Opposition;" and
- Exhibit 41 Document entitled "Trademark/Service Mark Application, Principal Register."

3. The following Exhibits, which accompany Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, are true and authentic copies of documents acquired from the LexisNexis All News (ALLNWS) Database:

- Exhibit 6 Document entitled "AUTO INDUSTRY SUPPLIER M&S MANUFACTURING COMPANY CLOSING" and
- Exhibit 10 Document entitled "Not much danger from the dollar."

4. Exhibit 7, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, is a true and authentic printout, printed on January 30, 2008, of the website available at the following Internet address:

http://business.search.ebay.com/Miyano_Manufacturing-Metalworking_W0QQ_trksidZm37QQcatrefZC12QQfromZR40QQfsprZ0QQsacatZ11804

5. The documents included in Exhibit 8, entitled “R.T. Machinery Sales Inc.,” are true and authentic printouts, printed December 6, 2007, of the website available at <http://www.rtmachinery.com/miyano-machines.htm> and the accompanying document available at <http://www.rtmachinery.com/pdfs/CNC%20Machining/CNC%20Machining-01.pdf>.

6. Exhibit 11 includes true and authentic copies of the cover page and page 14 from *Today's Machining World*, Vol. 1, No. 8.

7. Exhibit 12 includes true and authentic copies of the cover page, page 21, and page 85 from *Today's Machining World*, Vol. 1, No. 8.

8. Exhibit 14 is a true and authentic printout of the website available at <http://www.imts.com/visitor/FactSheet.html>, printed on December 2, 2007.

9. On information and belief, Exhibit 18, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, is a true and authentic copy of a news article entitled, “A Home with a Concert Hall MiyanoHITEC Machinery, Tom Miyano,” from *The Chicago Shimpō: (Chicago Japanese American News)*.

10. Exhibit 19, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, are true and authentic copies of documents received from the Illinois Secretary of State's Office.

11. Exhibit 20, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, is a true and authentic copy of a printout of the website at <http://www.miyanoHITEC.com/>, printed March 30, 2007.

12. Exhibit 22, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, are true and authentic "screenshots" or "screen captures," taken on April 20, 2007, of the website at <http://www.miyanohitec.com/>.

13. The following Exhibits, which accompany Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, are true and authentic printouts, "screenshots" or "screen captures," printed or taken on January 30, 2008, of the websites at either <http://www.miyanohitec.com/> or <http://hitecmachinery.com/>:

Exhibit 23 Website accessible at <http://www.miyanohitec.com/>;

Exhibit 24 Website accessible at <http://hitecmachinery.com/>;

Exhibit 25 Web page accessible at <http://www.miyanohitec.com/A/>;

Exhibit 26 Web page accessible at <http://www.miyanohitec.com/C/>; and

Exhibit 27 Website accessible at <http://www.miyanohitec.com/>.

14. Exhibit 30, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, is a true and authentic printout, printed on December 2, 2007, of the website entitled, "MIYANOHITEC MACHINERY, INC. Showroom," which is available at <http://www.imts.com/visitor/exdir/showroom/00050577.html>.

15. Exhibit 32, which accompanies Plaintiff's Memorandum in Support of its Motion for a Preliminary Injunction, is a true and authentic copy of the document entitled "Motion to Dismiss for Failure to State a Claim."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 8, 2008.

s/Jason Smalley
Jason Smalley

CERTIFICATE OF SERVICE

The undersigned declares that he/she is over the age of 18 years, not a party to this action, and employed in the County of Cook, by Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd., Attorneys at Law, 200 West Adams Street, Suite 2850, Chicago, Illinois 60606.

On the date listed below, I caused the filing of the foregoing **Declaration of (Attorney) Jason Smalley** with all its attachments and exhibits. I caused the service of these aforementioned documents on the following individuals, as addressed below, by the means indicated, and on the date listed below:

Vernon W. Francissen
FRANCISSSEN PATENT LAW, P.C.
53 W. Jackson Blvd., Suite 1320
Chicago, Illinois 60604
(312)294-9980 telephone
(312)275-8772 facsimile
vern@francissenpatentlaw.com

Robert M. Karton
Robert M. Karton, Ltd.
77 W. Washington St., Suite 900
Chicago, Illinois 60602-2804
(312)214-0900 telephone
(312)214-4230 facsimile
robert@karton.us

____ (BY MAIL) by placing for collection and deposit in the United States mail true copies of the documents at Chicago, Illinois in a sealed envelope with postage thereon fully prepaid, to the Chicago, Illinois addressee(s) shown above at the address(es) shown above.

X (BY HAND DELIVERY) I caused each such document to be personally delivered by hand to Vernon W. Francissen, at the address shown above.

____ (BY FACSIMILE) I caused each such document to be sent by facsimile to the addressee(s) shown above.

____ (BY OVERNIGHT COURIER) I caused this document to be sent by overnight courier for next day delivery, with all charges pre-paid, to the addressee(s) shown above at the address(es) shown above.

____ (BY ELECTRONIC MEANS) I caused this document to be electronically mailed (emailed) to the addressee(s) shown above.

X (BY ELECTRONIC MEANS) I cause each such document to be sent by electronic means through the Electronic Court Filing system to Robert M. Karton, pursuant to LR 5.9.

Executed on February 8, 2008 at Chicago, Illinois.

Signed: s/Jason Smalley